IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/07/2002

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THE HONOURABLE MR. JUSTICE A.K.RAJAN

CRL.A.NO.86 OF 1995

State by Revenue Divisional
Officer, Coimbatore,
rep. by Public Prosecutor,
Madras. .. Appellant

Vs.

Kanakaraj .. Accused

Criminal Appeal against the judgment dated 19.11.1993 in
S.C.No0.10 9 of 1993 on the file of the Assistant Sessions Judge, Tiruppur.

!For appellant : Mr.O.Srinath,
Additional Public Prosecutor

^For respondent : Mr.Soundararajan

:JUDGMENT

It is the case of appeal against acquittal. The respondent/
accused is a police constable working in Karamadai Police Station, Coimbatore District. The Inspector of Police, Mettupalayam filed a charge sheet against the accused that on 23.7.1988, at about 15.00 hours at Nathegoundenthottam in Mollepalayam village, PC 497 of Mettupalayam Police Station attempted to commit rape on Saraswathy @ Sarasa, aged about 17 years. During this incident, he threatened her not to shout and also caused injuries to the victim. The Assistant Sessions Judge framed charges for the offences under Sections 376, 323 and 5 06 (ii) IPC.

2. The victim Saraswathi, who was examined as P.W.1 in her evidence, deposed that on the date of the incident at about 3.00 p.m. while she was collecting Neem fruits, the accused suddenly gagged her mouth and took her to the nearby pit; he forced her to remove her clothes; When she refused, he removed her saree, torn her blouse and bitten her breasts; he laid on her and had raped her. A boy who was nearby seeing this, went and informed to her mother (P.W.5). Immediately her mother, aunt Chinnammal (P.W.6), her sister Jothy came to the scene and caught hold of the accused and took him to the village and tied him to a telephone post. The evidence of P.W.1 is

corroborated by P.Ws. 5 and 6.

3. PW7, Sivakumar, was the Inspector of police, Mettupalayam at the relevant point of time. He has deposed that on 23.7.1988 at about 6.30.p.m., the Sub Inspector of Police, Karamadai Police Station informed him over phone that a Police Constable was detained by Villagers; he along with the Sub Inspector and another police constable went to the place of occurrence; the accused Kanagaraj was found detained by the villagers; PW1 explained to him about the incident. He seized the personal belongings of the accused under a Mahazaar Ex.P5 in the presence of witnesses Easwaran and Karunakaran and they were marked as M.Os.11 to 17.

4. PW4, Dharmarajan, who was working as Tahsildar, Mettupalayam has stated in his evidence that on 23.7.1988, he received an information over phone at 7.15 p.m. that one policeman had sexual intercourse with a girl of Mullaepalayam village and because of that, there was Law and Order problem. Immediately, he went to Karamadai Police Station along with Village Administrative Officer, he reached there at about 8.15 p.m. At that time, the Deputy Superintendent of Police was making enquiries. Then the Inspector of Police, Karamadai Police Station, came with the victim as well as the accused to the police Station. He examined the victim and her statement was recorded by the Village Administrative Officer, which is marked as Ex.P1. He also sent a report dated 24.7.1988 to the Sub Collector.

5. P.W.7 has further stated that when he returned to the Police Station, the Superintendent of Police, Perianaicken Palayam and the Tahsildar, Mettupalayam had assembled there and the Tahsildar examined PW1 and recorded a statement. He also deposed that he registered a case in Crime No.103 of 1988 for the offences under Sections 276, 323 and 411 IPC and sent the printed FIR to the Court and the copies to the concerned officials. On the same date at about 8.25 p.m. he seized the clothes of the victim under Form-95 and at about 9.30 p.m. arrested the accused and remanded him to judicial custody.

6. P.W.2, Doctor Chandra, the Assistant Surgeon attached to the Government Hospital, Mettupalayam, examined the victim at 2.15 a.m. on 24.7.1988. She has deposed that the victim had already washed her genital area and changed her dress; scratch marks and nail marks were found on both the breasts; there were contusions 2" x1" on the medial side of both breasts; there were no marks of injury on any other part of her body. There were no marks to show that her breasts were bitten by teeth. She has further stated that there were no dried seminal strains found on the genitalia or the thighs. Ex. P2 is the certificate issued by her on the basis of the Chemical analysis report to the effect that there were no evidence of forced sexual intercourse. P.W.2 has stated in the cross examination that P.W.1 would have had sexual intercourse on many occasions prior to the alleged incident.

7. PW3, Doctor Gurusamy, the Assistant surgeon, attached to the Government Hospital, Mettupalayam, examined the accused Kanakaraj to prove his potency; he has given a certificate Ex.P3 to the effect that the accused

has potency and on the date of occurrence, the accused had consumed alcohol.

8. PW8, Jeyakodi, the Sub Collector of Coimbatore has stated in his evidence that after receiving the report of the Deputy Superintendent of Police on 26.7.1988, he took the case in Crime No.103/88 under Sections 376 r/w 511 IPC and 4(i)(j) of TNP Act for further investigation. On 8.8.1988, he sent the FIR copy to the District Collector. He also examined the witnesses P.Ws.1, 5, 6 and others and recorded their statements on 22.08.1988. Thereafter, he was transferred from that place. PW9, Sanjeev Kaushel, who succeeded P.W.8 as Sub Collector has examined the accused on 17.10.88 and recorded his statement. After his transfer P.W.10, Devan, succeeded as Sub Collector, Coimbatore and he has deposed that he examined Dr.Chandra, P.W.2 and recorded her statement. He has also sent the Final Report to the District Collector on 19.2.1990, which was marked as Ex.P6.

9. The trial Court, after considering the evidence on record held that the charges are not proved and hence acquitted the accused. The reasons given by the trial Judge is that the statement of the victim has not proved that she has sustained injuries on her back , thighs and legs. The learned trial Judge, relying upon the cross examination of PW2, came to the conclusion that when a woman struggles to prevent forcible sexual intercourse, there are possibilities for sustaining injuries on the other parts of her body; that when a woman is forced to lie on an uneven and rough surface without dress for sexual intercourse, there is the possibility of her sustaining injuries on her back, thighs and portions of her legs; and that when a woman is subjected to forceful sexual intercourse for the first time, there is a likelihood of rupture of hymen and bleeding. Since PW1 did not sustain any injuries on her back and since PW2 has asserted in her evidence that except for the nail marks and swelling on the breasts of PW1, there were no other injuries on her body, the learned Assistant Sessions Judge found that the evidence of PW1 that the accused had pushed PW1 into a rough surface and had sexual intercourse was not acceptable. Further the Assistant Sessions Judge pointed out that PW1, in her last portion of cross examination has stated that when the accused had forcible intercourse with her, she had her eyes open, and that was not disgusting to her. In the opinion of the learned Judge, the above portion of evidence of PW1 does not go to prove that the accused had forcible intercourse with PW1.

10. Aggrieved by this judgment, the State has preferred this appeal against acquittal. The Public Prosecutor submitted that in this case the evidence of PW1 is fully corroborated by medical evidence; the victim girl is a minor at the time of occurrence and since the accused is a police constable, he has taken advantage of the peculiar situation of the minor girl, and has committed this crime. He has also submitted that of course there are minor contradictions in the evidence, but that will not affect the main case. The evidence of PW1 alone coupled with the injuries proved the charges levelled against the accused.

11. The counsel appearing for the respondent submitted that there is absolutely no evidence to prove the offence under Section 376 IPC.

PW2 has stated that there was no symptom of rape on the victim; even in the complaint, it has been stated that it was only an attempt to commit rape. Therefore, even though the witnesses were examined, the trial Court rejected all the evidence and acquitted the accused. He further submitted that since it is an appeal against acquittal, that finding cannot be set aside even if it is possible for this Court to come to a different conclusion. Further, the learned counsel has submitted that there was enmity between this accused and one Kandasamy, who was an illicit arrack seller and PW1 had some relationship with Kandasamy; since the accused filed a case against the said Kandasamy, he using P.W.1 has foisted a false complaint against the accused. To that extent, the counsel submitted that there are suggestions to PW1 as well as to other witnesses, including the Investigating Officer. Therefore the prosecution case is not true and the case of the accused was accepted by the trial Judge and therefore he has rightly acquitted the accused.

12. The investigating Officer as well as P.W.9 the Sub Collector have denied that the accused told them that this case has been foisted by Kandasamy. Further the suggestion remains only as a suggestion, there is nothing more to prove the suggestion; the accused has not stated anything more than merely denying the case of the prosecution when he was questioned under Section 313 Cr.P.C. Therefore the defence case that this case has been foisted against him at the instance of Kandasamy does not appear to be true.

13. In the statement, Ex.P1 recorded by PW4 as well as in Exs.P4 and P5, it is stated that the accused attempted to commit rape. PW4, who examined the accused for potency, has also stated that the accused was charged for an offence of attempt to commit rape under Section 376 r/w 511 IPC. PW2, the Doctor, who examined the victim, has stated categorically that there was no symptom of any intercourse on the victim girl. Therefore, there is no evidence to corroborate the evidence of PW1 before the Court that she was raped by the accused as alleged. It is seen even from the evidence of the Sub Collector, PW8, that he received the complaint only under Section 376 r/w Section 511 IPC. Therefore, it is an offence under Section 376 r/w 511 IPC and not under Section 376. It is only a subsequent improvement by the Prosecuting agency. Therefore the Assistant Sessions Judge was right in holding that the offence under Section 376 IPC was not proved.

14. But the clothes of the victim, viz.,M.Os.1, 2 and 3 are found to be torn when they were seized; this corroborates the evidence of PW1 that the accused tore off her clothes when she refused to obey his orders. There is no reason to reject this evidence of PW.1. The evidence of Pws.5 and 6 corroborate the evidence of PW1 that the victim was lying in the pit; PW1 has stated this in the statement recorded by PW4, the Tahsildar. Thus there is ample evidence on record to prove that the accused attempted to commit rape of PW1. That the accused was taken to the village and was tied to the telephone post is proved by the evidence of PW4 and 7 as well as the evidence of Pws.1, 5 and 6. There was also a law and order problem. This is a natural reaction in a village. This action of villagers of tying a Police Constable cannot be the result of a foisted case. The accused has not stated to the Tahsildar or Sub collector that at the instance of Kandasamy, this case was

foisted against him. Therefore, the offence of attempt to commit rape under Section 376 r/w 511 IPC is proved beyond reasonable doubt.

15. The counsel for the respondent/accused submitted that the act of the accused does not amount to an offence under Section 376 r/w 51 1 IPC; at the most, only an offence under Section 354 IPC can be said to have been made out. This argument is not acceptable because the evidence available on record will prove that it is more than an act of outraging the modesty of a woman. When Pws.5 and 6 reached the place of occurrence, they saw that the victim was lying without any dress and the accused was found lying without any dress on her. Therefore, the accused is liable to be convicted for an offence under Section 376 r/w 511 IPC. The conclusion of the learned Assistant Sessions Judge that there is no evidence to prove the charge against the accused cannot be accepted. The evidence on record leads only to one conclusion that there was an attempted rape of PW1. Hence the order of acquittal by the Assistant Sessions Judge is liable to be set aside and hence, it is set aside.

16. It is very unfortunate that a police constable, who was in a drunken mood, attempted to rape a girl aged about 17 years, while she was collecting neem fruits; Such offences cannot be treated lightly especially when it is committed by persons, who are duty bound to protect such people. Though the accused was caught while committing the offence and was handed over to the police it is unfortunate that the trial Court acquitted the accused of all charges. The trial Court is bound to see, when the charges as framed was found not proved, if any lesser offence has been made out. The trial Court failed to do that exercise in this case.

17. As per Section 376(2) IPC, whoever being a police officer, commits rape within the limits of the police station to which he is attached shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and he shall also be liable to pay fine. Since this accused is a Police Constable attached to the Karamadai Police Station within which limits this occurrence had taken place and since it is only an attempt as per Section 511 IPC, the punishment may extend to one half of the imprisonment provided for that offence.

18. Though the specific case of the accused was that while prosecuting one Kandasamy for the offence under Prohibition Act, a case has been foisted against him by using PW1, who had some relationship with Kandasamy by way of suggestion, there is nothing to strengthen that suggestion even in the statement under Section 313 Cr.P.C. Not even the FIR against that Kandasamy has been marked. Hence the suggestion put to the accused does not appear to be true.

19. The counsel Mr.M.S.Soundararajan, appearing for the accused has argued with utmost ability in this case. This Court places on record its appreciation.

21. Considering the facts of the case, the accused is imposed a sentence of three years rigorous imprisonment and fine of Rs.1000/-.

10.07.2002
Index:Yes
Internet: Yes
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To
1.The Assistant Sessions Judge, Tiruppur.
2.The Assistant Sessions Judge, Tiruppur through the
Principal Sesions Judge, Coimbatore.

A.K.RAJAN,J
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Crl.A.No.86 of 1995